

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MIGUELINA PEREZ,

Plaintiff,

- against -

PINO GROCERY CORP. and FEDERICO
DE LA ROSA,

Defendants.

ORDER

17-CV-2965 (RRM)

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ROANNE L. MANN, CHIEF UNITED STATES MAGISTRATE JUDGE:

Plaintiff has moved for leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. See Motion for Leave to Proceed In Forma Pauperis (May 16, 2017), Electronic Case Filing Docket Entry #5.

Section 1915(a) of Title 28 provides that:

Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who submits an affidavit . . . that the person is unable to pay such fees or give security therefor.

Because plaintiff has established by affidavit that she is currently unable to pay such costs or to give security therefor, the Court, in its discretion, grants her application. Accordingly, payment of the court's filing fee is waived. Since plaintiff has already served defendants with process, the application of section 1915(d)'s requirement that an officer of the court serve process on plaintiff's behalf is rendered moot.

However, plaintiff may recover funds later in this action sufficient to enable her to repay the filing fee. If she is a prevailing party after trial, she is entitled to recover costs pursuant to

Fed. R. Civ. P. 54(d)(1) and is authorized to recover filing fees under Local Civil Rule 54.1(c)(10). Should plaintiff recover monies in this litigation, whether after trial or other disposition on the merits, or in settlement, plaintiff must reimburse the Court for the fees and costs that are waived by this order. See Darang v. City of New York, No. 15 Civ. 6058 (ENV)(VMS), 2015 WL 8207438, at *2 (E.D.N.Y. Dec. 7, 2015); Fodelmes v. Schepplerly, 944 F.Supp. 285, 286 (S.D.N.Y. 1996); cf. Flint v. Haynes, 651 F.2d 970 (4th Cir. 1981) (finding that use of the word "prepayment" in section 1915(a) "indicates that Congress did not intend to waive forever the payment of costs, but rather it intended to allow qualified litigants to proceed without having to advance the fees and costs associated with litigation").

SO ORDERED.

**Dated: Brooklyn, New York
June 21, 2017**

/s/ Roanne L. Mann
ROANNE L. MANN
CHIEF UNITED STATES MAGISTRATE JUDGE